CONGRESS MUST GOVERN ITS TERRITORY—MAN NOT PROPERTY.

SPEECH OF HON. PHILEMON BLISS, OF OHIO.

IN THE HOUSE OF REPRESENTATIVES, JANUARY 15, 1857.

Mr. BLISS. If I could be surprised, Mr. Chairman, at any act of this Administration, I should greatly wonder at the personal chullitions of its parting message. Seduced, and, as usual, betrayed, the country was beginning to forget its crimes in sympathy for its misfortunes; and, could it have retired with a little dignity, public disgust might not have followed the public curse.

I would like to have the President's apologists tell me upon what constitutional authority he presumes, as President, to criticise the lawful acts of the citizen? Franklin Pierce has the same right to speak, to approve or condemn, as any other man, and for this the press and the forum are open to him; but the President can only speak as warranted by the Constitution. He may give information of the state of the Union, as well as recommend measures; but of what, and to what end? Clearly as annunciatory or explanatory of his own official acts, or as a result of, or incentive to, legislative action. But the Constitution makes him not our chief priest or teacher, like the Pope or Czar. It refers us not to him to select the subjects of our discussion, to decide the orthodoxy of our opinions, or direct the manner of their propagation. It is no official concern of his, whether we are patriotic or factious, wise or foolish, so long as we violate no law, and warrant no official action.

But perhaps there is a meaning in these strictures I have failed to appreciate. I should like to know whether the President, by habituating us to Executive criticism, designs to prepare the public mind for despotic superintendence—whether we, too, of the States, at some future day, are to be subjected to Federal oversight—our mouths stopped by Federal gags—our assemblies dispersed by Federal bayonets—our presses and our business edifices presented by Federal grand juries, and destroyed by Federal forces? Unless action of some kind is contemplated, this official scolding is but insolent and weak impertinence.

But, with the details of the unwonted invective of the message, I shall not trouble myself. I feel more concerned at the constant reiteration of certain modern heresies, so fatal to the proper exercise of the powers and proper performance of the duties of Government. Upon these themes the President had a right to speak—it is my privilege to reply, and for the hundredth time will I meet assertion by demonstration.

The President talks of the prohibition of Slavery north of the Missouri Compromise line as "obsolete, and also null for unconstitutionality," "a dead letter in law," &c. Waiving the fact that it has never been so treated or regarded, if it be really null, gentlemen admit it to be so, because Congress has no power to legislate on the subject. I desire, with the brevity imposed by our rules, to show the error of the pretence—to aid in vindicating the Constitution against this crude novelty. I shall not rely upon the crowding authorities, for I speak not as a lawyer to courts, but as a legislator to a body higher than courts. I am chiefly impelled at this time thus to do, from the unwonted efforts made to prostitute our Supreme Court—a court already the subject of painful distrust—to make it, instead of the citadel of our liberties, the bulwark of Slavery. We represent a power in whose hands Presidents and Judges are but "clay in the hands of the potter;" and it is to THE PEOPLE that I appeal from the President's *dicta*, and, if need be, from that of the court itself. The gentleman from South Carolina, [Mr. KEITT,] in scrutinizing our acts to find something from which to excuse the President's charge of revolution, finds that we appeal to the people to decide questions of political law! *We do thus appeal;* and we call upon our only sovereigns to vindicate their liberties, and to that end to vindicate the law, whatever the infidelity of their servants.

As the President fails to inform us upon which of the doctrines of that agglomeration that has seized the name of the once out-spoken Democracy he bases his opinion, I must dismiss the message. According to the Michigan, or "squatter sovereign" school, Congress has no constitutional power to legislate at all for the Territories, and hence cannot prohibit Slavery. As, then, our power over the territory is denied, it is incumbent on us to make it good, or abandon its exercise.

I. The Constitution grants the power in express terms:

"The Congress shall have power to dispose of, and make all necessary rules and regulations respecting the territory or other property belonging to the United States."

In construing this provision, we should bear in mind that the Constitution was framed for a Union of States, and for such territory as should be permanently needed for a seat of Government, arsenals, &c. All our territory proper was soon to be erected into States; and to it, as to Slavery, as things of a temporary and uncongenial character, it was the policy of the framers of the Constitution to make but the briefest allusions, and so frame its provisions relating to them as to give them a meaning when these transitory conditions should have passed away.

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It is claimed that this clause refers to "territory," only as land or soil, the subject of private property. This unusual use of the word appears, it is said, from the context, because associated with the words "to dispose of," and "other property." If these were the only words, the inference might be legitimate; but as connected with the phrase, "to make all needful rules and regulations," the words, *rules*, *regulations*, and *to regulate*, being the very words used in other parts of the instrument as conferring legislative powers, the inference is clearly rebutted. Here, then, are two sets of phrases connected with the word, one of which usually applies to private property, and the other to the term in its ordinary sense. *Why may it not be used in both senses?* Rather than suppose its signification to be thus entirely changed, is it not more reasonable to believe that it was used at least in its usual sense, as connected with the power to make rules, &c., though it may have the additional sense of land, as connected with the power to dispose of? In the exceedingly condensed language of the instrument, nothing would be more natural, and by it the object would be fully obtained. With that twofold meaning, not a word too much is introduced; while with the one claimed, the general power "to make all needful rules," &c., is mere surplusage; for the power to sell, implies every other power necessary to that end.

But if it be still urged that the term "other property" implies that the word "territory" only means property, suppose we admit it. "Property" is a word quite as flexible as "territory." In general, when applied to things, it is that which belongs to, and may be controlled by, the owner. Territory, as property of an individual, can only mean land. Territory, as property of a State, usually means not land, neither "the extent or compass of the State itself," but a tract of country belonging to, or under the dominion of, the parent State, and disconnected with it, and may be disposed of without affecting the integrity of the State, or any interest in the soil. Thus, Cuba is no part of the kingdom of Spain, yet belongs to, or is the property of, Spain, and may be disposed of, as well as governed, by her. Louisiana was no part of the Republic of France, yet it belonged to France, was governed by France, and was disposed of by France. Oregon is no part of the United States, politically speaking, yet it is the Territory of the United States, belongs to, or is the property of, the United States, and part of it was disposed of by the United States. A territory, in this sense, is as much the property of a State as a franchise or incorporeal hereditament is the property of an individual. Hence, the term "other property" is perfectly consistent with the twofold meaning of the word "territory," which, if property as soil, is also property as territory.

But if it be still insisted that the word can have but one sense, I then insist that it shall have only its natural and usual meaning, and that it does not mean land at all, but that the land or soil is included in, and covered by, the term "other property."

II. The Constitution grants the power by necessary implication.

The cession of Louisiana Territory by France to the United States is dated April 30, 1803, and is in the words, "doth hereby cede to the United States, in the name of the French Republic, forever, and in full sovereignty, the said Territory, with all its rights and appurtenances."—(*Statutes at Large*, vol. 8, p. 200.) Louisiana was purchased under the treaty-making power, and we must necessarily consider it constitutionally done. Does the treaty-making power give us merely the right to purchase the soil—to speculate in real estate—or the power to acquire dominion or sovereignty over territory? By the terms of the purchase we acquired the latter. *How, pray, does this sovereignty escape us the moment it is acquired?*

Again, connected with the regulation of the territory, Congress is authorized to admit new States. States spring not from land alone. The first emigrant, and the first hundred emigrants, have a right to the protection of law, and this protection is Government. To prepare the people as they come in to form a State organization, to secure them in their liberties that they may freely form it, to accustom them to free institutions, so that they shall form a State congenial, strong, and law-abiding, instead of weak and factious, given to raids, and reckless of the ends of the Union, protection is essential. It is therefore "necessary and proper to carry into execution the power" to admit new States, so far as they are taken from our own territory. That earnest Republican, St. George Tucker, of Virginians the noblest Roman of them all, seems to take for granted the power to govern Territories as an incident of this power, and doubts the legality of the Ordinance of 1787 before its ratification by Congress, because the old Federation had no such power.—(*Tucker's Notes to Blackstone.*) I understand this also to be the position of the gentleman from Mississippi, [Mr. Quitman.]

To those who say that the people of the Territory have the right to govern themselves, I reply; as individuals, all men have certain rights of person and property, and it is the object of Government to protect them in these rights; but socially, men have the right of participating in Government only as part of the body politic. The theory of the Territories is, that the inhabitants are not yet there, not in sufficient numbers to form a body politic, to bear the burdens of Government. Hence, they must be *all* protected in their natural rights until such body can be formed, until they are in sufficient force to bear the burdens of state. In the political sense, they are not yet "the people," but an unorganized, fragmentary people, with no fundamental law but the Federal Constitution and acts of Congress. *Shall these acts guard the settler's rights, as do State Constitutions, or shall they be left to the despotic will of transient majorities?*

But gentlemen cannot be honest, at least there is a strange inconsistency, in denying the power to govern; for while they are loud in the denial of the power, they never hesitate to exercise it. The Kansas-Nebraska act, supported as well by the Michigan as the ruling school, organized Territorial Governments, extended the United States laws over the Territory, and provided for

the appointment, by the central power, of Governor, Judges, Marshals, and other executive officers.

What higher exercise of sovereignty can there be than the organization of a Government—the granting of power to govern? A deputy cannot deputize—it always requires the principal.

It seems to me, also, that the appointment of a Governor to rule over and regulate a Territory, supposes some authority akin to sovereignty, and that neither "suspended" nor in "abeyance." Especially is it so when he is claimed to be almost absolute; when his certificate is final and conclusive of the legality of a pretended election; so much so as to legalize invasion and conquest; so much so hat neither the people of the Territory nor Congress can go behind it.

Judges, too, are sent by the disciples of the same school. We cannot govern, but we may organize courts that will arrest and imprison, without color of crime, for months refusing bail, while known murderers go at large on worthless bonds—that to compass the destruction of printing-presses, bridges, and peaceful hotels, will aid to pack grand juries, and all for the avowed purpose of protecting?—that, perhaps, would be illegal—but of depopulating the country.

We, that have no power, also send to the Territory marshals, not to keep the peace and execute just process—we find no constitutional power for that—but, when marauders, invited by our officers, invade the country, and despoil and murder the people, to watch for resistance, in order to give crime the color of law. And they, with our other rulers, have succeeded in making the little finger of a Government, sustained by those who ignore the power to govern, thicker than the loins of Muscovite or Turk!

And what is the authority, if not in our sovereignty, for extending the United States laws over the Territory, as by the Nebraska act, in enacting, with other laws, a whole criminal code? If sovereignty be not requisite to give laws, to imprison or take life for crime, I should like to know what can require it?

But, it is said, a necessity is laid upon us, and we have only done what is necessary. But whence the necessity? Why may not Great Britain or Mexico do this as well as we? The answer must be, because *we* own the Territory as well as the land, and must preserve and protect it and its incoming people for future States. *This yields the whole question.* There can be no necessity for usurpation. And if we possess any powers, we are authorized to do all things *necessary* and proper to carry those powers into execution.

I have thus shown, from the express and implied grants of the Constitution, as well as the practical admission of those who deny it, that the Congress does possess the sovereignty over and power to govern its territory, the ultimate sovereignty residing, of course, in the people. It is not, then, in the language of my colleague, [Mr. BINGHAM,] a question whether we will govern, but how we will govern.

But there is another party, Mr. Chairman, admitting the general power to govern, that deny either to Congress or the Legislative Councils the power to prohibit Slavery The import of this doctrine will appear, when we consider that this party make Slavery legal in all the Territories; and their negative is thus pregnant with a most startling positive, the nationality of Slavery. This novelty, from a speck, a cloud, as it were, no bigger than a man's hand, has already overspread the slave States, has enveloped the Executive Mansion, and is casting its dark shadow upon the States yet remaining free. It is from its bosom that the storms that agitate us have arisen, and the tempests within its folds will yet overwhelm us, if not driven to their cavern retreats! The simple statement of a limit of authority may not alarm us; but when we look at its basis, we see treason to the Union, and, what is far worse, treason to human nature and the fundamental principles of government.

True Democracy makes government as weak as is consistent with its ends. Hence the attractiveness of any statement that seems to limit power. But this seeming restraint is but clothing men with absolute power. It is no limitation, but a terrible endowment—a casting the weak, bound and dumb, at the feet of the strong!

All who advocate this doctrine give not precisely the same reasons, or at least do not state them in precisely the same manner. They agree in claiming slaves to be property, and that neither Congress nor its creature, the Territorial Legislature, can legislate to destroy this property, or impair its free enjoyment in all the Territories. But gentlemen of the so-called State Rights school, who are never without a reason for their claims, however unreasonable it may be, give one peculiar to themselves. Now, I confess I approach the language of political metaphysics, with some fear that, unable to appreciate its subtilties, I shall only cleave the thin air; but I will endeavor to translate the positions of gentlemen as I understand them.

In general, the power to govern, not derived from any other Government, is a sovereign power; but the United States, being a Federation composed of sovereign States, has no sovereignty; but the sovereignty of the United States means simply the sovereignty of the several States, and the people of the United States means the people of the several States; and that, as Governments are trusts, the Government of the United States is a trust for the people of the several States, and not for the people of the United States as one people. Hence, the sovereignty of the Territories is in the several States, and not in the United States, and ultimately in the citizens of the several States; that the Federal Government possesses the sole power to govern the Territories, yet this power is a mere trust for the several States and the people thereof; and hence they must be governed with reference to the equal rights and interests of all the States and the people thereof. One of the rights of the people of part of the States is the right to hold slaves, and to prevent it in the common territory would be a breach of the trust.—[*See Calhoun, passim.*]

Its advocates attach great importance to this doctrine of sovereignty, as affecting the question of ultimate allegiance, and the ultimate power of judging of infractions of the Federal Constitu-

tion, with the right of secession, and have surrounded the subject with such a phosphorescence of metaphysics, that I, perhaps, have been led into the bog, yet hope I have apprehended the "form of the idea."

I have no time, Mr. Chairman, to undertake to expose the unconstitutional character and the anarchical and anti-republican tendency of the general theory; nor can I attempt to describe the scarce-averted civil war, the suspension of law, the bloody strife, and the angry future, the fruits of its actual application; but I must content myself with avowing my adherence to that construction of the Constitution which, while it reserves to the States and the people, in full and unabated sovereignty, every power not delegated to the Federal Government, at the same time, as to powers actually granted, makes that Government supreme, and as far as possible independent of the States; which makes the Constitution an instrument of government where powers are granted—a league only as to those provisions where powers are withheld; which, as to the former, brings the Government in direct contact with the people, and makes us politically, as geographically, one country, and also makes us one people. I accept the motto of our fathers, "from many, one," as a political fact. I believe that all, in general, hold the double relation of citizens of the United States, and of the States in which they reside. We are thus equally removed from consolidation and anarchy.

If this be the true philosophy of the Union, the whole theory of the nature of the territorial trust falls to the ground; and, besides, I can see no interest, practically, which any State, or citizen thereof, as connected with his own State, can have in the Federal territory. The States did not acquire it; but it was ceded to the nation "in full sovereignty." They own not the land, but that primarily belongs to the same power; and not in trust—for, if so, the proceeds of its sales would belong to them. Upon this theory, those whose occupation gives them no actual domicile, and who are citizens of no particular State, or who reside in the District of Columbia or the Territories, can have no interest in the common territory; nor can a resident of a State who, for some physical, moral, or other disqualification, is denied citizenship therein. Thus the United States holds its own territory in trust for a portion only of its own citizens, and leaves it in the power of any of the States to deprive another portion thereof of their interest in the same!

But the claim is mere theory. The Territory is held for the Union at large, and for the States only as belonging to it; subject, it is true, to the general trust of all Governments, binding them to consult the good of the governed; and also subject to an additional and imperative obligation, arising from the peculiar situation of the Territories, to so found their institutions as shall guard the rights of their future people, and as shall make States loyal to the Constitution and its great ends.

But, suppose I admit the theory: does the conclusion follow, that a prohibition of Slavery is a violation of the trust?

We should first understand fully the claim. The citizens of the slave and free States, in theory at least, possess the same system of government and laws, and enjoy the same general rights of property. They may cultivate their own soil, make their own contracts, and are alike protected in whatever is known as property, either to the common law or to the civilized world. All these equal and common rights and privileges we propose to guaranty, in our Territories, to every emigrant, from whatever State or country. But, in addition to all this, certain States authorize the enslavement of a portion of their own people. By so doing they destroy every sacred domestic institution and human relation, legalize torture, darken and pauperize the masses, render null every guarantee of personal rights, outrage the universal sentiment of justice, and cast off the sympathy of Christendom. This, they say, is an entailment for which they are not responsible, and then turn coolly round and demand, as of right, that, in addition to their rights and privileges in common with us, we permit them to entail the same curse upon all the incipient States! Verily the truth of the fable: Shame, soon after the beginning of the journey, retreated to the slower walk of Virtue, and left Vice to stalk on in the sole companionship of Impudence.

Assuming the admitted general equality of the States and their citizens, it is insisted that the trust would be violated by preventing Slavery, because thus the property of the citizen of South Carolina would be excluded, while that of the citizen of Ohio would be admitted. Waiving, for the present, the claim of property in man, I reply:

1. If there is inequality, it is because the rights and interests of the citizens of one State are subordinated to those of another; but as they are both treated alike, there is no subordination.

2. The claim is, that this trust is held for the citizen of the States. The trust, of course, is only for him while he remains such citizen. By emigrating to the Territory, the trust ceases as to him; for by so doing he renounces his State citizenship, and can no longer claim the benefit of the trust.

3. There is no restriction upon the Carolinian, but only upon the slaveholder. Slaveholders are found in every State, and are numerous in Northern cities—a fact which accounts in part for the hostility of those cities to the rights of free labor. But such slaveholder is careful, of course, to keep his slave where the law fails to protect him; and if he would continue to enslave, he must continue so to keep him. The same hardship, if it may be so called, is imposed upon him as upon the Carolinian. The New York "Union saver," who flourishes upon the unpaid labor of his Louisiana bondman, may as well claim that the equality of his own State with that of South Carolina is denied, because he cannot hold him in bondage in Minnesota, while the Carolinian is welcomed to the same Territory with his horses and his plow, and may there hold them in security.

4. The slaveholder may take slaves into the Territory if he chooses; but when there, he must be governed, as in other things, by the local law. He may take his child, but the local law decides

the age of majority. He may take his apprentice, but the local law snaps the bond. He may take the assets of his bank, but the franchise he leaves behind him, for it depends on the local law.

5. The trust is for the citizens of the State as a whole, while gentlemen claim it for a class. The majority of South Carolinians are non-slaveholders, and are, equally with the citizens of Ohio, interested in Slavery restriction. Is there no trust for them? Must all the soil, whose genial sun repels not the Carolinian, as he would seek a home where his sons, as he could not, may labor with honor and self-respect, be forbidden him? If he would go where Slavery shall hang no longer like a millstone around his almost drowned energies—if he would surround himself with those privileges enjoyed only by the rich at home—if he would be blessed with free schools, free presses, and churches in reach of all—if he would see indolence, dissipation, and poverty, his almost necessary heir-looms, flee before the dawning intelligence and the unwonted hum of industry, he may not go to the common territory; the vision of free society will not be realized there. He must wend his way where the cold sun fails to warm his unenergized blood—where lands are beyond his reach, and unaccustomed crowds jostle him in his slower walk; or he must remain in his old isolation, the victim of a crushing despotism, and too much crushed to repel, perhaps to understand, the power that oppresses him. There is no trust for him. His habitual subjection has shorn him of political power, and modern Democracy knows him not.

There are also in the slave States native Republicans, who have not forgotten the doctrines of the fathers, as well as Republicans who have fled the Old World to secure personal rights, and not "Alabama plantations." All these would speak, and write, and vote, as they think, but Slavery forbids. A citizen of yonder State, one whom I knew in my schoolboy days, and whom to know was to honor—who is, as he always was, clear-headed and true-hearted, who concentrates in his own person as great nobility of soul and more true love for the State of his long adoption, than whole districts of her dominant caste; this man became guilty of disloyalty to the slave interest. The poor around him found a friend, and one who sought to aid them in that career that gives character to the Free State laborer; and, instead of being surrounded with gangs of ragged and shirking slaves, the deficiency of whose thriftless labor must be supplied by the sale of their young men and women, he gave employment to the dependent free white, and was thus enabling them to overcome their doom. Thus enlisted in the elevation of labor, he was of course a Republican, and vindicated his principles by his action. This man, thus noble and true, not even suspected of violating any law, just or unjust, merely for the security of slave domination, is driven from his property and home, and thus are crushed his experiment of free speech, and his attempt to elevate free labor. Virginia, not he, feels the blow; for the name of John C. Underwood will be honored when the State he would again restore to her old position will, if she persevere, soon be thankful for a place scarce above the least. And yet, is there no trust for such as he and those he would bless? They may desire free territory as a refuge, but it is all needed for extending the empire of the DESOLATING CASTE, and Democracy knows them not.

A few months since, a learned and gallant Carolinian professor, believing, perhaps, in the claim that a county of his own State first breathed forth the glowing language of the Declaration, and not having learned its mere rhetorical character, ventured, in respectful frankness, to speak of the issues of the day, to advise his fellow-citizens not to rely upon the business of exporting slaves, but to retain them to reclaim the wastes of their own State. To crush such presumption, he was promptly driven from his chair, and with eager meanness dismissed from a scientific employment under Government. I exceedingly wonder that any honorable man will remain in his department, lest he be suspected of complicity in so base a tyranny. The trust cannot be for such as he.

But if the trust be not violated from the effect of Slavery restriction upon the emigrant, is it so violated from its effect upon the slave States and their citizens while so remaining? The answer will be plain, when we consider what interest any State or its citizens can have in Territorial legislation. The Territories are supposed to be incipient States, soon to enter the partnership—minors under training for the responsibilities of majority. All the States and their citizens are equally interested in having the institutions of the Territory so moulded as to make a good partner—as most likely to fit it to perform well its Federal duties, and aid in securing the ends of the Constitution. They should be such as to give the best disposition towards the "Union;" the most eagerness for the establishment of "justice;" the most power to aid in insuring "domestic tranquillity," "providing for the common defence," and "promoting the general welfare;" and the best disposition, greatest fitness, and power, to assist in securing "the blessings of liberty" to the people and their posterity.

Experience has left no doubt whatever as to the effect of free and slave institutions in fitting a State for these duties. To what States do we look for plots against the Union? Whence come treasonable threats, and where are treasonable gatherings so common as scarce to excite attention, while, under the severest provocation, scarce a whisper of disloyalty is heard elsewhere? Where is "justice" systematically refused to labor, and the citizen denied the law's protection, if his sentiments displease the mob? Whence come attacks upon the freedom of debate, and whence is the inviolability of the people in the persons of their representatives successfully assailed? Where do we see "domestic tranquillity" endangered by a breath, and panics that prompt tortures which shame the Inquisition? Whence are armed invasions of peaceful Territories, unleashing murder, and enthroning anarchy, and all to force an odious system upon an unwilling people? What States have so nursed the enemy within, as to impair their efficiency in the "common defence," and, instead of pursuing the objects

of our fathers' bond, have become drunk with the cup of Slavery, and are madly dragging us into the ever-yawning gulf of despotism? Answer me these questions, and then tell me what institutions all are interested in seeing established in the incoming States?

But the grand error of those who base their vindication of the equality of the States upon the establishment of Slavery in the Territories is in the assumption that there can be property in man; for the claim is at least specious, that whatever may be the power of Congress to regulate commerce or make regulations for the Territories, it should not discriminate against particular species of property.

But man cannot hold property in man! The claim is a vile heresy—its consummation a terrible usurpation. When God placed man upon the earth, he gave him dominion over the fish, the fowl, the cattle, the earth, and every living thing that moveth upon the earth, but not over his fellow; and He gave him the herb and the fruit bearing seed, and commanded him to till the ground. He caused the rain to fall and the grain to yield him its increase, and it was all the property of man; but he gave him no power to force his brother for him to till the earth, or gather for him the grain. This is the announcement of the great law of property, as written in the nature of things.

The idea of property is also one of our most vivid internal conceptions, and all the moral instincts cluster around it. No language, however poor, is without the *mine;* and no people, however barbarous, will fail to vindicate their own. The universal propensity of the enslaved or defrauded to steal, is but a tribute to the inward perception of property and justice. This instinct is vivid and all-controlling in our earliest years; and as much so in the infant whom gentlemen call property, as in him whom they style his owner. Each will possess and defend his little properties, the fruit of his gathering, his labor or his exchange; and neither, till false teaching and pampered lust quenches instinct and dethrones reason, will dream that the other can be subject to his ownership. The same instinct teaches every man to regard himself as his own. "To make the willing slave, we first unmake the man." The sense of self-ownership is present, and dictates self-control, even in the relations of a just and natural dependence; for though the child may be led, yet his will must first be broken before he will yield it to force; and even the dire subjugation of a life of slavery leaves clear in the mind the instinctive connection of *I* and *mine.*

Even under the dire subjection of Slavery, man is not held as absolute property. Property implies a subject and object—the owner and thing owned. The owner is man; the thing owned is—what? man, too? If so, the word expresses a relation between men, which differs from property. In speaking of persons, it is proper to say that they hold the relation, as of master and slave, master and servant, parent and child, &c.; but we never speak of the relation of man and a horse, or man and a farm. The term only applies to man, and it applies to all men in different and reciprocal conditions. But Slavery being a relation of absolute power and subjection, in the poverty of language, we call him so subjected, property; the very term being an eloquent protest against the relation—an acknowledgment of the usurpation. And even in this sense, the term "property" cannot be held to apply to man, without deciding what men, or what class of men, shall be property, and who shall be their owners.

The answer, that slaves are property, evades the inquiry; for who, pray, shall be slaves? Those who are black, and have woolly hair? But the majority of such are not slaves; and the immense majority of slaves in the world are not of this class—and besides, upon what principle do you decide that they shall be slaves? If it be answered, that prisoners of war shall be slaves, while I admit this to have been the principal foundation of ancient slavery, it cannot be of modern, for the rule is universally repudiated, except in Africa and among the American Indians; and, besides, it is void for uncertainty, as describing no one, for all may become prisoners of war—hence all may become slaves. If it be said, those whose ancestors were slaves, I reply, first, "All men are created equal;" hence there is no corruption of blood; and, second, all slaves are descended immediately or remotely from free ancestors. There can, then, be no rule about it—it is simply a question of power. But rules of property are rules of right and justice as opposed to power. Hence the universal reason echoes back the universal instinct; so that, in the language of Sheridan, "Never was this inextinguishable truth destroyed from the heart of man, placed, as it is, in the core and centre of it by his Maker, *that man was not made the property of man.*"

What our Creator has thus clearly taught us, both by the written Word and by the inward light, as well as by the exercise of our faculties, is also recognised by all who pretend to base their statements upon justice and the nature of things. Locke assumes self-ownership as an axiom for the purpose of showing individual property in things. "Though the earth and all inferior creatures," he says, "be common to all men, yet every man has a property in his own person; this nobody has a right to but himself. The labor of his body and the work of his hands, we may say, are properly his. Whatever, then, he removes out of the state that nature hath provided and left it in, he hath mixed his labor with, and joined to it something that is his own, and thereby made it his property." So does man not only own himself, but this ownership is the foundation of his right to separate property in "the earth and all inferior creatures."

Mr. PAINE. I ask to interrupt the gentleman one moment. I merely wish to ask the gentleman if his remarks do not apply to a murderer, and everybody else, just as well as they do to a slave?

Mr. BLISS. If the gentleman can see the application, I confess that I cannot. When a man, by crime, forfeits his life or forfeits his liberty, to the necessity of the equal protection of all who do not forfeit it, I can see no analogy to the state of forced slavery from the cradle.

This declaration of Locke is but a specimen

of the reasoning of all authoritative writers. Self-ownership is the axiom in the law of property.

Most writers who claim the sanction of law for property in man, rest their claim upon the civil code. The Roman law, in many of its features, even in the earliest days, was celebrated for its wisdom and its justice; and in deference to its leading objects, and, I may add, to the sense of justice within us, Justinian, its great reformer and commentator, commends to us jurisprudence as "the science of the just and the unjust;" and states the maxims of law to be, "to live honestly, to hurt no one; to give every one his due." As if to vindicate the civil law, he traces Slavery to the law of nations as applied to war. "Wars arose, and in their train followed captivity and slavery, both of which are contrary to the law of nature."—(L. I., t. 2.) "Slavery is an institution of the law of nations, by which one man is made the property of another, contrary to natural right."—(L. I., t. 3.) "Slaves are denominated *servi*, because generals order their captives to be sold, and thus *preserve* them, and do not put them to death. Slaves are also called *mancipia*, because they are taken from the enemy by the strong hand." I leave the gentleman from South Carolina [Mr. KEITT] to prosecute his issue with Justinian upon the origin of the word.

Yet the power of the master, absolute as it was, differed but little from the power of the *pater familias*. Laws take their color and direction from the character and habits of the people. The early Romans were but organized robbers; and as they were superior in energy and wisdom to the nations around them, and governed by no absolute head, they naturally possessed laws more complicated, and, as between themselves, more just than we look for in rude ages. But their character as freebooters tinged their whole system, and their complex origin seems to account for the strange mixture of justice and oppression, law and power, found in their civil relations. Sanders, in his introduction to his edition of Justinian, thus describes the origin of that portion of the civil law which seems to base rights upon plunder:

"The Tricenses or Quirites were of Sabine extraction. It was from them that the later Romans derived all that was most distinctive in their private law. The great peculiarity of the Sabine law, or, as it is called by the Latin writers, the *jus Quiritium*, was the power of the *manus*. The *manus* was the hand of the conqueror. The warrior, or rather the freebooter, went out to fight and to rob, and all he won was the fruit of his right hand. He could deal with it as he pleased; and, as a successful raid was his chief mode of acquiring property, all he possessed, of whatever kind, was considered to be the spoils of war. He was the owner by conquest of all that belonged to him. His property was all classed under the term *mancipium*—it had all been taken by the 'hand,' (*manu captum.*)"

As the nations gradually woke from the slumbers of the transition era, it was found that the property relation of man to man had passed away, and no longer made the progress of society impossible. If the Roman Church had conferred no other benefit upon mankind, the influence of her pastors, silently but steadily exerted during the "ages of faith," for the release of the bondman and the humanization of the law of nations, should modify our indignation at the ambition of her prelates. The civil law, as modified by the modern nations that adopt it, is no longer "contrary to the law of nature"—it is purged of the robber maxims of the Sabine.

But the light illumined not the veiled continent; and we find it still governed by the law of the "strong hand." This law was introduced into the American colonies along with the sable captive; and the importation was found so profitable, that, reckless of its effects upon the future, for over two centuries it hardly met a rebuke from civilian or priest. Its glaring inconsistency with the free common law of England was clearly apparent, and was finally solemnly acknowledged by the chief court of the Empire.

The successful war of independence, based upon an acknowledgment of the equal rights of man, broad as Christianity itself, and the obligation of Government to protect them, was perfected by that Federal Constitution that made us one people. In framing that instrument, it became important to decide its basis—whether it should rest upon the mixed foundation of the common law and the law of the strong hand, so imported from Africa, yet already yielding to the new political life, upon "feet part of iron and part of clay," or be based upon modern civilization and modern law. We are not left in the dark as to the decision. The Constitution of the United States, that great and noble production of great and noble men—a production which, notwithstanding the defects that time has developed, yet in its adaptation to the circumstances of the young Republic, in its vindication of fundamental principles, in those nice balancings of power by which alone many could be one, leaving the one still many, has no parallel in human history. Some powerful and never-sleeping interest, adverse to popular rights, may gain control of its administration, strip it of its most beneficial powers, or, leagued with other interests, institute novelties for law, and, by trampling on the local jurisdiction, hopelessly subject to a greed, inherent in all artificial interests, every personal and private right; it may make an instrument, designed alone for protection, the right arm of a centralized power, sustaining and sustained—a power thus enabled to grasp vast revenues, to direct an executive militia, all-pervading, and breathing alone the central will, to inspire a judiciary chosen with reference to such interests, powerful without precedent, and practically irresponsible; it may thus debauch it, but the instrument itself will be viewed from the ages as a noble monument of the wisdom of those who did what they could, but could not bequeath virtue, or reconcile irreconcilables.

But whatever the defects of the Federal Constitution, it recognises not the law of the "strong hand"—it entirely ignores the Afric-American code. By the clear declaration of its object, to secure liberty to the people and their posterity; by the express provisions that no person shall be deprived of life, liberty, or property, without due process of law; by the fact that slaves are not mentioned or specifically described in any part of the Constitution, but, whenever they are supposed to be alluded to, are uniformly spoken of as "persons," it is perfectly clear that the

Federal Constitution in no way recognises man as property. In this respect, its language is guarded with most convincing care.

The history of a few clauses furnishes additional evidence of the intention of the framers. The Virginia Convention which ratified the Constitution, insisted on certain amendments more effectually guarding the rights of freemen. The ninth, tenth, twelfth, fourteenth, and fifteenth paragraphs, recommended by it for incorporation in the Federal Constitution, are substantially embraced in the first, fourth, and fifth amendments subsequently adopted; *but with this significant change, that for the word* FREEMEN, *the term* PEOPLE *or* PERSON *is substituted*—clearly indicating that these fundamental provisions were not intended to be confined to any class of persons.—(See 2 *Elliot's Debates*, p. 484.)

I need but to refer to the oft-quoted language of Madison, Gerry, and others, in the Constitutional Convention, showing that, in those provisions which may refer to slaves, they intended to do precisely what they did—so frame them as to give Slavery no sanction, and to guard against any implication that there could be property in man. The Journal of the Convention shows its scrupulous care on this subject.

So has the general action of Congress. While it has shown great zeal, and gone, as I believe, beyond its constitutional authority, in providing for the reclamation of fugitives from service, it has never yet deliberately acknowledged property in slaves. The Constitution provides that private property shall not be taken for public use without just compensation; yet Congress has refused to pay for slaves killed while impressed into the public service, or otherwise employed. Horses or other property so taken and destroyed have always been paid for, but not slaves. This uniform and practical interpretation of the Constitution clearly rebuts the novel assumptions of gentlemen.*

Slaves under the Federal Constitution are not property, because they are represented in Congress as persons, though as persons under disability. No one claims that we have here a property representation; for if so, who speaks here for the overshadowing capital of the North? Are the hundreds of millions of the free States to go unrepresented, while the "property" of the slave States has a voice and a vote that decides most important questions? Is this equality? And yet, if slaves are property, it is exactly the equality which our Constitution gives us—an equality that deeply dishonors a section that will for a moment endure it.

Slaves, then, under our Constitution, are not property. Its language does not so make them; its provisions, if honestly executed, would render Slavery under its exclusive jurisdiction impossible; its framers repudiated all language that would admit the claim, and our legislation repels the idea.

Have gentlemen considered all the consequences of this claim? If slaves are property other than by a mere municipal regulation, confined to its bounds, I would like to know what is to hinder their being so held in every State in the Union? Could an Ohio horse be enfranchised by being taken to Kentucky? Can Georgia confiscate a Massachusetts vessel in her ports? States may exclude the creature of the local law as franchises, and may guard the public morals by destroying gambling apparatus or ardent spirits; but property in general they cannot destroy, cannot confiscate, cannot keep out of their borders. Any doctrine or decision declaring slaves property by the general law, guaranties their enjoyment as such, in any State in the Union; and thus Slavery is universal.

Again, if slaves are property, the United States are liable to pay for every slave that shall die from employment in the United States service. In case of a successful invasion of the slave States, it will become the duty of Government to call upon the people, *en masse*, to resist the invasion—slave and free, white and black, all are bound—none are exempt from duty on such an occasion. And when the States shall thus be redeemed from the invader—when the lists of the killed, the maimed, and the missing, are brought in—it will be found that for the tens of thousands that will necessarily fall in a serious war, as many millions will be needed for their persons; and for the thousands who shall be wounded or otherwise disabled, the invalid pension rolls will be filled with—the soldiers' names? No, but those of their masters. And so, in case of insurrection, every insurgent destroyed by the United States is so much property taken for the public use, and must be paid for. There is no resisting a claim on the Government, if slaves are property under Federal law. We uniformly pay for the soldier's horse killed in battle, and for private property destroyed by our troops.

No; slaves are not property. The great law of property cannot reach them; the voice of God within us rejects the idea; the civilized code of nations no longer warrants it; the Constitution of our common country repudiates it; our legislation has ignored it; and now gentlemen claim a reversal of our whole policy—seek to initiate a revolution more radical than that which gave us birth; and for what? To take a new step in the progress of human enfranchisement? No; but to adopt, as the basis of our future action, "the wild and guilty fantasy, that man can hold property in man."

I have thus endeavored, Mr. Chairman, and with constrained brevity, to vindicate the Constitution from the insidious doctrines of those who would debauch it. I fear false doctrine more than invective—the latter recoils upon its vulgar author. I fear the enthronement of arbitrary power far more than the sword—the wounds of the latter will heal; but when the doctrines of the Revolution, the truth of which alone redeemed us from the charge of factions rebellion, shall be successfully sneered down—when the "law of the strong hand" shall be substituted for the principles of "equal and exact justice," then, indeed, may "Hope, discouraged, bid the West farewell," and the Seers of humanity look to other climes and other ages for the realization of their dreams.

* For elucidation of Congressional action on this subject, see *Giddings's Speeches*, 289.